

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Ken Tschumper,

Complainant,

vs.

**FINDINGS OF FACT,
CONCLUSIONS AND
ORDER**

Fred Sandvik and Fred Wescott,
Hickory Orchards, LLC,

Respondents.

On December 10, 2012, the above-entitled Fair Campaign Practices Complaint came before a Panel of three Administrative Law Judges: Ann C. O'Reilly (Presiding Judge), Richard C. Luis, and Kirsten M. Tate.

The matter was submitted to the Panel based on the record created at the October 25, 2012, Probable Cause hearing and the underlying record, including the Complaint, the Prima Facie Determination, the Probable Cause Order, and subsequent filings of the Parties. The OAH hearing record closed on December 10, 2012, at the conclusion of the Panel's deliberations.

Karl Sonneman, Attorney at Law, represented Ken Tschumper (Complainant). Reid LeBeau II, Attorney at Law, Jacobson Buffalo, represented Fred Sandvik and Fred Wescott of Hickory Orchards, LLC.

STATEMENT OF THE ISSUE

Did Respondents Fred Sandvik and Fred Westcott of Hickory Orchards, LLC violate Minn. Stat. § 211B.15, subd. 2, by making a prohibited corporate contribution to Greg Davids in the form of a campaign sign posted on corporate property?

The Panel concludes that the Complainant has established by a preponderance of the evidence that Respondents violated Minn. Stat. § 211B.15, subd. 2. The Panel further concludes that no civil penalty is warranted.

Based on the record and proceedings herein, the undersigned panel of Administrative Law Judges makes the following:

FINDINGS OF FACT

1. The Complainant, Ken Tschumper ran unsuccessfully for the Minnesota House of Representatives seat in District 28B.¹

2. Mr. Tschumper's opponent, Greg Davids, was the incumbent in the race and won the election with approximately 58 percent of the vote.²

3. Fred Sandvik and Fred Wescott are the owners of Hickory Orchards, LLC, a limited liability company formed under Minnesota Statutes Chapter 322B.

4. Hickory Orchards conducts business in Minnesota. It operates a relatively small (approximately 100 acre) apple farm located off of Highway 25 in a rural area six miles outside of LaCrescent.³

5. At some point prior to October 18, 2012, Fred Sandvik received a telephone call from a field foreman employed by Hickory Orchards. The foreman told Mr. Sandvik that a neighbor of Mr. Tschumper, John Strehl, had asked him if he could post a campaign sign in support of Mr. Davids on property owned by Hickory Orchards.⁴ Mr. Sandvik told the foreman to tell Mr. Strehl to go ahead and post a campaign sign for Mr. Davids on Hickory Orchards' property. Sometime thereafter, Mr. Strehl posted a campaign sign in support of Mr. Davids on Hickory Orchards' property that was visible from Highway 25.⁵

6. On October 18, 2012, Mr. Tschumper filed this Campaign Complaint with the Office of Administrative Hearings. The Complaint alleged that Greg Davids, his campaign committee, campaign treasurer, and Mr. Sandvik and Mr. Westcott, as owners of Hickory Orchards, violated the prohibition against corporate contributions to candidates under Minn. Stat. § 211B.15, subd. 2.

7. On or about October 20, 2012, the Respondents received notice of Mr. Tschumper's Complaint. On that same day, Mr. Tschumper called Mr. Sandvik. Mr. Tschumper told Mr. Sandvik that the reason he filed the complaint was because Greg Davids' campaign had filed an earlier complaint against him and his campaign committee alleging an improper corporate contribution.⁶ Mr. Tschumper said that his complaint was in response to Davids' complaint.⁷ Mr. Sandvik was unaware that campaign laws prohibited posting campaign signs on corporate property and he offered to immediately remove Davids' campaign sign from the Hickory Orchards' property. Mr. Tschumper declined Mr. Sandvik's offer and instead urged Mr. Sandvik to call Greg

¹ House District 28B includes all of Fillmore and Houston Counties.

² Mr. Davids received 12,006 votes and Mr. Tschumper received 8,542 votes.

³ Testimony of Fred Sandvik. (All citations to testimony refer to testimony presented at the Probable Cause hearing.)

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*; See, *Baker v. Tschumper, et al*, OAH Docket 7-0320-23108 (Findings, Conclusions and Order dated October 29, 2012).

⁷ *Id.*

Davids and ask Davids to withdraw the complaint against him (Tschumper).⁸ Mr. Tschumper said that if Mr. Sandvik were able to get the campaign complaint against Tschumper withdrawn, Mr. Tschumper would withdraw this complaint against Sandvik and the other Respondents.⁹

8. Mr. Sandvik did not call Mr. Davids or anyone else associated with Mr. Davids' campaign committee to request that the campaign complaint against Mr. Tschumper be withdrawn.¹⁰

9. The campaign complaint filed against Mr. Tschumper and his campaign committee was not withdrawn. It went to an evidentiary hearing before a Panel of three Administrative Law Judges on October 24, 2012, and the Panel determined that Mr. Tschumper's campaign manager and campaign committee had violated provisions of the Fair Campaign Practices Act.¹¹

10. A probable cause hearing on this complaint was held on October 25, 2012. In an Order dated October 29, 2012, Administrative Law Judge O'Reilly found there was probable cause to believe Respondents Sandvik, Westcott and Hickory Orchards violated Minn. Stat. § 211B.15, subd. 2, with respect to the posting of a campaign sign in support of Mr. Davids on Hickory Orchards' property.¹²

11. The OAH record in this matter was held open for written submissions by the Parties until December 3, 2012. The hearing record closed on December 10, 2012, at the conclusion of the Panel's deliberations.

Based upon the foregoing Findings of Fact, the undersigned Panel of Administrative Law Judges makes the following:

CONCLUSIONS

1. The Administrative Law Judge Panel is authorized to consider this matter pursuant to Minn. Stat. § 211B.35.

2. Minnesota Statutes § 211B.15, subd. 2 prohibits a corporation from contributing directly or indirectly anything of monetary value to a committee to promote or defeat the election of a candidate.

3. For purposes of Section 211B.15, a "corporation" is defined to mean:

- (1) a corporation organized for profit that does business in this state;
- (2) a nonprofit corporation that carries out activities in this state; or

⁸ *Id.*

⁹ *Id.*

¹⁰ Sandvik Test.

¹¹ *Baker v. Tschumper, et al*, OAH Docket 7-0320-23108 (Order dated October 29, 2012).

¹² Judge O'Reilly had earlier dismissed the allegations against Mr. Davids and his campaign committee and treasurer. See, Prima Facie Determination dated October 22, 2012.

(3) a limited liability company formed under chapter 322B, or under similar laws of another state, that does business in this state.

4. Hickory Orchards, LLC is a for-profit limited liability company formed under chapter 322B that does business in this state. It, therefore, meets the definition of "corporation" under Minn. Stat. § 211B.15, subd. 1.

5. The word "contribution" is defined, in part, as "anything of monetary value that is given or loaned to a candidate or committee for a political purpose ..." ¹³

6. The posting of a campaign sign in support of a particular candidate has monetary value to that candidate and candidate's committee. ¹⁴

7. The burden of proving the allegations in the Complaint is on the Complainant. The standard of proof is a preponderance of the evidence. ¹⁵

8. The Complainant has established by a preponderance of the evidence that Respondents Fred Sandvik and Fred Westcott, as owners of Hickory Orchards, LLC, violated Minn. Stat. § 211B.15, subd. 2, by posting a campaign sign in support of Mr. Davids' candidacy on property owned by Hickory Orchards.

9. The attached Memorandum explains the reasons for these Conclusions and is incorporated by reference.

Based on the record herein, and for the reasons stated in the following Memorandum, the panel of Administrative Law Judges makes the following:

ORDER

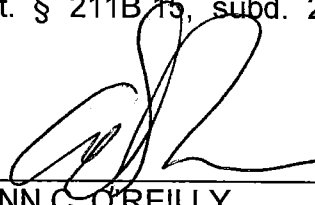
IT IS ORDERED:

That Respondents Fred Sandvik and Fred Westcott of Hickory Orchards, LLC are reprimanded for violating Minn. Stat. § 211B.15, subd. 2, by posting a campaign sign on corporate property.

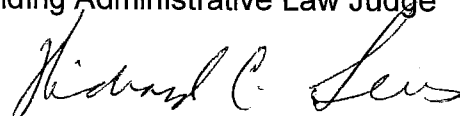
Dated: December 11, 2012



KIRSTEN M. TATE
Administrative Law Judge



ANN C. O'REILLY
Presiding Administrative Law Judge



RICHARD C. LUIS
Administrative Law Judge

¹³ Minn. Stat. § 211A.01, subd. 5.

¹⁴ See, *Adams v. Anderson and Klatt True Value Hardware*, OAH Docket 12-0320-19974 (Findings, Conclusions and Order, November 19, 2008).

¹⁵ Minn. Stat. § 211B.32, subd. 4.

NOTICE

Pursuant to Minn. Stat. § 211B.36, subd. 5, this is the final decision in this case. Under Minn. Stat. § 211B.36, subd. 5, a party aggrieved by this decision may seek judicial review as provided in Minn. Stat. §§ 14.63 to 14.69.

MEMORANDUM

Minn. Stat. § 211B.15 prohibits corporations from contributing money or anything of monetary value to candidates or their committees. The Respondents do not contest that a campaign sign in support of Representative Davids was posted on corporate property. The Complainant has established that, by permitting the posting of a campaign sign on corporate property, Respondents contributed something of monetary value to Mr. Davids' campaign in violation of § 211B.15, subd. 2.

Having found the Respondents violated Minn. Stat. § 211B.15, the Panel is authorized to impose a civil penalty or issue a reprimand.¹⁶ The Panel concludes that a civil penalty is not warranted in this case. While the posting of the campaign sign off Highway 25 may arguably have had some minimal impact on voters, the Panel finds that the violation was inadvertent and isolated. Moreover, the record established that Mr. Sandvik offered to immediately remove the sign once he was made aware that its posting may violate campaign laws.

While the Complaint had a reasonable basis in law, and the facts could support imposing a minimal civil penalty against the Respondents, the Panel finds Mr. Tschumper's purpose in bringing the Complaint (namely to leverage the withdrawal of an unrelated complaint lodged against him), troubling and a misuse of the Fair Campaign Practices process. The Panel concludes that imposition of a civil penalty in this case would not be appropriate. Instead, the Panel finds that the facts in this case support only the issuance of a reprimand to the Respondents for a technical violation of Minn. Stat. § 211B.15, subd. 2.

A.C.O., R.C.L., and K.M.T.

¹⁶ Minn. Stat. § 211B.35, subd. 2.